

KEY NOTE ADDRESS BY JUSTICE KANYEIHAMBA AT CONSULTATIVE FORUM ON UGANDA'S MEDIA LAWS, KAMPALA, APRIL 30, 2010

Yesterday, I received three documents, two of which were alarming. The first was entitled, Principles for a Bill to amend the Press and Journalist Act with the main object of Regulating the media. The Document was dated May 6, and it purported to originate from the office of the Prime Minister.

The second was a draft dated January 29 and called A Bill for an Act entitled. The Press and Journalist (Amendment) Act, 2010. The long title to this document reads as follows. "An Act to amend the Press and Journalist Act in order to provide for registration of newspapers: to require that the editor of a newspaper shall ensure that what is published is not prejudicial to national security; to rationalize the composition of the media council; to provide for licensing of newspapers, to increase the membership of the disciplinary committee; to provide for expeditious disposal of complaints before the disciplinary committee; to provide for offences and penalties and to provide for other related matters".

Is this a joke?

At first, I thought that these two documents were a kind of a joke emanating from some previous authoritarian or dictatorial regime where the population has never heard of the words, democracy, freedom, rule of law or freedoms of speech and the press.

On closer examination, I discovered that the documents originated from Uganda government sources.

I was astounded because I could not believe that a government which came into power under a popular wave of the quest for democracy, the rule of law, human rights and constitutionalism could contain or harbour within its ranks ministers, administrators and bureaucrats who have completely gone overboard and abandoned everything good and desirable about good governance and the liberties of the people in preference to the ghastly misdeeds of past regimes both within and outside Uganda.

I thought I was dreaming when I recalled the old saying that power corrupts and absolute power corrupts absolutely. Is this then what staying in and exercising it beyond the democratic and constitutional limits mean to peaceful and law abiding citizens? I woke up from this political slumberland to the reality of the contents of the two documents. I reflected, and then read the third document.

My political sanity began to return to its original position when I read the third document entitled XIV Article 19 Global Campaign for Free Expression. It turned out to be a critical and constructive memorandum on the two documents I had first read.

This third document was a sobering relief to the internalization of the first two. It was accompanied by several others including the current legislation on the press and media, The Declaration of Principles on Freedom of Expression in Africa by the African Commission on Human and Peoples' Rights, the statement on the Press and Journalist (Amendment) Bill, 2010, the Judgment of the Uganda Supreme Court on Constitutional Appeal No. 2 of 2002.

When comparisons are made between these documents, a clear picture emerges. The draftsmen or women of the first two documents appear to have been ignorant or oblivious to the provisions of the Uganda Constitution and the judgments of the Supreme Court on freedoms of expression and the media. If one did not know that such perversions can happen even to principled governments, one would mistake the originators and draftspersons of the first two documents to be out laws and demagogues. But I digress.

What we have in the proposals for new legislation on the freedom of speech, press and media constitute draconian and unacceptable measures that would be a reversal of Uganda achievements for more than a generation. They spell out clearly evil intentions to enslave the minds, thoughts and communication of intelligence, knowledge and actions intended to advance good governance and welfare in the country.

They should not be the subject of mere criticism and amendment. No. They must be rejected at once as the most unacceptable devices intended to stifle debate and progress on good governance in this country. In my opinion, there is nothing in them to be salvaged. They must be opposed in toto.

Whether it be in the media, in the country, in Parliament, in the Judiciary or in Cabinet, there must be co-ordinated and verbal assault on these proposals because if passed into law, this country would ultimately reap evil from them.

Importance of Free Press

In free and democratic societies, the press and other forms of media are essential tools of governance. They investigate, research into and publish all that is good or bad in society. They alert and educate citizens whether rulers or the governed, about the right and wrong paths in the manner and style, respective governments are behaving and acting in the running and administration of public affairs.

In this regard, the independence and freedom of the press and other media together with the ethics and courage of the proprietors, directors, journalists and reporters who work for and in them are of crucial importance.

The interplay between press freedom, restraints on the part of publishers and the ethics and courage of journalists creates the necessary equilibrium for acceptable standards and behaviour in publishing and governance.

In countries where monolithic, authoritarian or personalised regimes are the order of the day, the role of the press is either severely restricted or constantly challenged, but also its importance has never been greater or in greater need. Generally, the media is adversely affected by the law, the policies and practices of the people in power.

In the result, the accuracy, the integrity and credibility of the media both in print and electronics are seriously if fatally compromised. Where journalists and reporters are intimidated or persuaded to “co-operate”, and become good boys and girls in the judgment of those they are minded to support unconditionally, the truth of what they write or report in the press and other media becomes suspect, their stories are mainly in support of party or government often uninformed or misinformed, unresearched and boring. Perhaps only their reports on international news and events exhibit some grains of truth and interest to readers or listeners.

Yet, as the court said in the case of *Government of Republic of South Africa V. Sunday Times Newspaper*: “The role of the press in a democratic society cannot be underestimated. The press is in the front line of the battle to maintain democracy. It is the function of the press to ferret out corruption, dishonesty and graft wherever it may occur and to expose the perpetrators. The press must reveal dishonest, mat- and inept administration.

It must also contribute to the exchange of ideas. It must advance communication between the governed and those who govern. The press must act as the watchdog of the government.” Personally, I would go further and say that the press and other media must go beyond the role of a watchdog. They must also act as the bloodhounds against corruption, abuse of power and misgovernance.

Human rights protection

The freedoms of expression and information are equally of fundamental importance for the recognition and protection of other basic human rights and fundamental freedoms. Before being preoccupied with other governmental pastimes, the NRM in its hay days of administration and good governance was acutely aware of the role the press plays in a free and democratising society. It entertained dialogues with members of the press and accepted the Constitutional provisions about freedom of information. It initiated the media bill which came to be enacted into law.

Thus, Article 29 Of the 1995 Constitution provided that: “29 (1) Every person shall have the right to;

- * Freedom of speech and expression, which shall include freedom of the press and other media.

- * Freedom of thought, conscience and belief which shall include academic freedom in institutions of learning.

* Freedom to practise any religion and manifest such practice which shall include the right to belong to and participate in the practices of any religious body or organization in a manner consistent with the Constitution.

* Freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition and

* Freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organizations.

(2) Every Ugandan shall have the right:-

More freedoms...

* To move freely throughout Uganda and to reside and settle in any part of Uganda.

* To enter, leave and return to Uganda.

* To a passport or other travel document”.

In relation to the freedom of the press, article 41 of the Constitution which has been the subject of numerous judicial applications, enforcement and interpretation, is equally important. It provides that: “41 (1) Every citizen has a right of access to information in the possession of the State or any other person or agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person”.

However, Parliament has to enact a law classifying the categories of information that are likely to prejudice the security or sovereignty of the state as clause (2) of the same article emphasizes that:

“(2) Parliament shall make laws prescribing the classes of information referred to in clause (1) of this article and the procedure for obtaining access to that information”. Generally then, the freedom of speech includes the right to speak, write or publish whatever one chooses and only subject to other laws of the state.

This freedom includes the rights of conscience and of worship and the right to give and receive information and Ideas through any medium. This is the freedom that includes several aspects of Constitutional importance such as the absolute freedom of speech in Parliament, the immunity and protection of the persons and proceedings in courts of law, the right to express and propagate political views and ideas including those which are in opposition to those propagated by the leaders and government of the day.

The freedoms of speech and the press may be exceeded by the publication of treasonable, seditious, defamatory, blasphemous or obscene matter or of inciting mutiny or disaffection in security forces. It is also an offence to exercise this freedom

for the purposes of contempt of Court or of Parliament or a breach of the Official Secrets Act. These offences are of a criminal nature, but defamation may also be a civil wrong if it deliberately and falsely exposes any person about whom it is published, to hatred, ridicule or contempt or, causes him or her to be shunned or avoided by other reasonably disposed citizens.

Legal issues

If the defamation is in writing or some other permanent form or medium, it is called libel, but if it is confined to spoken words or significant gestures, it is called slander. Defamation can also be by way of innuendo, as one of Uganda's newspaper once experienced to its cost.

Notwithstanding the absolute nature of Parliamentary and Judicial proceedings, participants, litigants and witnesses who are neither members of Parliament nor judicial officers may commit such offences as contempt of Parliament or of Court or perjury. State communications have qualified privilege just as fair and accurate reports in newspapers, periodicals and broadcasts-provided that they are made in good faith.

There are certain speeches, writings and publications which in law are accorded what is commonly known as qualified privilege. These include:-

- * Communication in pursuance of a legal, social or moral duty which is made to a person who has an interest or duty in receiving the communication.
- * A statement in his or her defence of a person whose character or conduct has been attacked.
- * Communication between persons possessing a common interest such as man and wife, partners in a firm or business enterprise.
- * Accurate reports of Parliamentary or Judicial proceedings.
- * Printing or broadcasting of extracts from Parliamentary or Judicial proceedings in such a manner as not to distort the accuracy of the proceedings.
- * Fair and reasonable comments on matters of public importance.
- * Fair and accurate reports in newspapers and other media on proceedings of public meetings of public bodies including those of local government or public corporations, where publications of such reports are not specifically prohibited.

The freedom of the press includes the publication, content and control of periodicals, newspapers, telecommunications, email, radio, television, the staging of plays and

showing of films. As already noted, there has been considerable litigation on the freedom of speech and press.

Either for lack of adequate coverage of news by the media or for lack of a reading culture or, indeed, because of official suppression of news and publication thereof, Uganda has tended to be rife with rumour mongering, sometimes indulged in by certain sections of the media. Such rumours have tended to unfairly damage the reputation of targeted individuals and the standing of both the government and opposition leaders.

The culture of telling tall stories and rumour-mongering has also tarnished the reputation of certain sections of the media. It is said that some journalists and reporters receive or demand financial payments and other rewards for publishing or withholding certain information or facts that may be damaging to individuals, government ministers or the government itself. Other stories have circulated in the past that some publications are intended to divert the course of justice or divert readers from the truth about illegality, abuse of office or corruption.

In the case of Constitutional Appeal No.2 of 2002, Charles Onyango Obbo and Andrew Mujuni Mwenda V. The Attorney General, the Supreme Court of Uganda laid down cardinal principles and rules governing the independence and freedoms of those who publish or work in the newspapers and other publications. In the lead judgment, Hon Justice Mulenga correctly criticised the provisions of Section 50 of the Criminal Code which the court recognised as an impediment on the freedom of the press and the court other members of the court agreed with the learned Justice. In my own judgment in the same case I said, "The freedom of the press is largely unrestricted even if those who exercise it may be prosecuted or sued under a given law aware of the old adage, 'publish and be damned'."

About the author:

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